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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,250	12/04/2003	Michael Sebastian Spalt		7789

7590 06/27/2005

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EXAMINER

WARREN, DAVID S

ART UNIT PAPER NUMBER

2837

DATE MAILED: 06/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/728,250

Applicant(s)

SPALT, MICHAEL SEBASTIAN

Examiner

David S. Warren

Art Unit

2837

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5 is/are rejected.
- 7) ☒ Claim(s) 4 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Law (3,780,202). Regarding claim 1, Law discloses the use of a manually moveable arm (30), mounting an electromagnetic pickup (32, col. 2, lines 38 – 40), means 32 is movably attached to one end of the instrument body (fig. 1), means for rotatably mounting the assembly to the body (figs. 1 – 3) comprising a pivot shaft screw (27) and anchor (18, 19), and means for adjusting the frictional engagement of the assembly (28). The Examiner maintains that the structure shown in Law's figs. 1 – 3 will define both an arc and a plane. Regarding claim 2, by tightening element 28, the rotational movement of the pickup assembly will be retarded. Regarding claim 5, Law discloses the use of an instrument body (11), plurality of strings (i.e., banjo), manually movable wiper and electromagnetic pickup assembly (32, 30), means for moveably mounting and adjusting friction (19, 27, 28), mean for electrically connecting the pickup to an amplifier (col. 2, lines 40 – 42).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Law in view of Engard (6,162,984). The teachings of Law have been discussed supra with respect to independent claim 1. Since Law is concerned with a banjo, Law is silent as to any routed guide cavity. Engard discloses the use of routed guide cavities for linearly displaced pickups (cavities are unnumbered, but can best be seen in fig. 4, specifically the area that receives element 28). It would have been obvious to one of ordinary skill in the art to combine the teachings of Law and Engard to obtain a pickup pivoted within a routed opening. The motivation for making this combination is to allow ease of movement with minimum parts. Assuming argument, wherein a banjo manufacturer would not (or could not) consider a routed guide cavity on the head of a banjo, the Examiner views this rejection to be more appropriate when considering that Engard being modified in accordance with Law. In other words, one of ordinary skill would consider using angular displacement (as taught by Law) in place of linear displacement (as taught by Engard).

Allowable Subject Matter

5. Claim 4 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art is silent as to a pivotal sloped pickup assembly.

6. Also, the Examiner appreciates differences between Law and the instant invention, albeit these differences are not claimed. The Applicant may also consider adding to claim 1, the location of the pivot point to achieve pickup movement to produce *sul ponticello* and *sul tasto* tone qualities. If the Applicant were to add the *sul ponticello* and *sul tasto* limitation, claim 1 would most likely be allowable.


Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Examiner notes the prior art cited in Applicant's specification Law (3,780,202), Rendell (3,911,777), Aaroe (4,261,240), and Pagelli (5,012,716). The Examiner sites the patent to Rowe (3,869,952) especially figs. 5 and 6 to show pivotal pickup systems. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David S. Warren whose telephone number is 571-272-2076. The examiner can normally be reached on M-F, 9:30 A.M. to 6:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Martin can be reached on 571-272-2800 ext 37. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

dsw


MARLON T. FLETCHER
PRIMARY EXAMINER